

MONTEREY COUNTY

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CHARLES J. McKEE
COUNTY COUNSEL-RISK MANAGER

Susan K. Blitch
Senior Deputy County Counsel

July 15, 2019

Via Email Only

Mr. Dan Rubins

76611-57772649@requests.muckrock.com

Re: Public Records Act Request of July 4, 2019

Dear Mr. Rubins:

This letter responds to your above-referenced Public Records Act Request made by email, dated July 4, 2019. Your request asks for:

Request:

In accordance with California Penal Code §832.7 (b)(1), as amended by SB 1421, I am requesting all "Brady lists," "Giglio lists," "potential impeachment disclosure lists," or any similar compiled records or lists of records of the type set forth in California Penal Code §832.7 (b)(1)(C). That is, "Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence."

In particular, the records I am seeking would provide a list of law enforcement officers in your jurisdiction whose involvement in a criminal proceeding would have to be disclosed as potentially exculpatory evidence in accordance with *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 450 U.S. 150 (1972). I am making this request for both sworn employees and non-sworn employees. At a minimum, please include the full name, serial number, and agency of employment; separate (sic) lists for each agency in your jurisdiction are fine. If possible, please also include the date of inclusion on the list and any descriptive information relating to the reason for inclusion on the list. If redactions are made, please be sure to justify how the redaction "clearly outweighs" the public interest of disclosure per Government Code §6255.

The time limit of this request is the previous 10 years, or to the maximum extent possible under your agency's records retention schedule if less than 10 years. To be clear, while SB 1421 went into effect on January 1, 2019, in accordance with the recent appellate (sic) decision in *Walnut creek Police Officers' Association v. City of Walnut creek et al.* which unsuccessfully challenged

retroactivity, your agency is required by law to produce such records created prior to January 1, 2019 as well as those records created after the effective date.

Response:

Pursuant to Penal Code § 832.7, the District Attorney's Office has posted a summary of incidents "involving the discharge of a firearm at a person by a peace officer or custodial officer", which includes a description of the event, the officers involved, and, for most incidents a detailed report of the event. The names of some witnesses have been redacted to preserve their confidentiality. The list can be accessed at:

<https://www.co.monterey.ca.us/government/departments-a-h/district-attorney/press-releases/officer-involved-shootings>

The list is also responsive, pursuant to § 832.7, as to Monterey County, for incidents "in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury." Again, third-party witness information will be redacted pursuant to Penal Code § 832.7. We believe the information posted on the District Attorney's website sufficiently responds to your request. However, if you desire additional records, please contact the undersigned and we can begin working on a cost estimate to produce any additional disclosable records. (Government Code § 6253.9).

As to your request for records related to "a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public"; and records related to "a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence": the County has no records which fall within the exceptions outlined in Penal Code § 832.7. To the extent you are requesting records that do not fall within the exceptions outlined in Penal Code § 832.7, such records are exempt from disclosure pursuant to the California Government Code, including, but not limited to: 6254(c) (personal privacy); 6254(k) (privilege, including attorney-client privilege); Section 6254(f) (investigative records); and Section 6254(k) (privileged communications).

As to your request for: "'Brady lists," "Giglio lists," "potential impeachment disclosure lists," and to the extent you are seeking records which do not fall within the exceptions enumerated in Penal Code § 832.7 and SB 1421, these records are exempt from disclosure pursuant to, but not limited to, the following exemptions: California Government Code sections 6254(c) [Personnel records], 6254(f) [investigatory records], 6254(k) [privileged communications], 6254 (p) [deliberative process], 6255 [public interest]; Evidence Code sections 1040 and 1043 [Official Information and personnel records]; Code of Civil Procedure 2018.030 [Prosecutor's work product]; and Penal Code section 1054.6 [Prosecutor's work product].

Please be advised that every effort has been made to provide all of the disclosable records which might fall within your inquiry. As such, we believe our reply is quite thorough. However, if you have knowledge of a specific document which has not been provided in response to your

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inquiry, please notify us and we will be happy to provide the document(s) to you unless, of course, it is exempt from disclosure under applicable law.

If you wish to dispute any of the determinations contained in this response to your request(s) please advise us of your legal argument. If you would also please provide us with a citation or legal authority which supports your argument we will be willing to reconsider our opinion.

Sincerely,

CHARLES J. McKEE
County Counsel-Risk Manager

By: 

SUSAN K. BLITCH
Sr. Deputy County Counsel

SKB:cg